

1988

Plastic World, Inc v. Ehman Engineering, Inc. : Brief of Respondent

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

PLASTIC WORLD, INC.

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Plaintiff-Respondent

vs.

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EHMAN ENGINEERING, INC.

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Case No. 880296-CA

Defendant-Appellant

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Priority D 1413

BRIEF OF RESPONDENT

On Appeal from the Order of the
Third Judicial Circuit Court for
Salt Lake County, State of Utah
Honorable Michael Hutchings

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FILED

NOV 18 1998

Mary T. Norton
Clerk of the Court
Utah Court of Appeals

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JURISDICTIONAL STATEMENT

This is an appeal from an Order issued by the Third Judicial Circuit Court for Salt Lake County, Salt Lake City Department, the Honorable Michael Hutchings, presiding. The Circuit Court failed to grant defendant-appellant's Motion to Dismiss plaintiff-respondent's complaint. Jurisdiction is conferred upon the Court of Appeals pursuant to Utah Code Ann. Sec. 78-2a-3(2)(c).

ISSUES PRESENTED FOR REVIEW

1. Did the Circuit Court correctly hold that there was sufficient jurisdiction over Ehman Engineering to allow the matter to go forward in Salt Lake County.

DETERMINATIVE STATUTORY PROVISIONS

Utah Code Ann. Sec. 78-27-22:

It is declared as a matter of legislative determination, that the public interest demands the state provide its citizens with an effective means of redress against nonresident persons, who through certain significant minimal contacts with this state, incur obligations to citizens entitled to the state's protection. This legislative action is deemed necessary because of technological progress which has substantially increased the flow of commerce between the several states resulting in increased interaction between persons of this state and persons of other states.

The provisions of this act, to ensure maximum protection to citizens of this state, should be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution.

Utah Code Ann. Sec. 78-27-23:

As used in this act:

(1) The words "any Person" mean any individual, firm, company, association, or corporation.

(2) The words "transaction of business within this state" mean activities of a nonresident person, his agents, or representatives in this state which affect persons or businesses with the State of Utah.

Utah Code Ann. Sec. 78-27-24:

Any person, notwithstanding Section 16-10-102, whether or not a citizen or resident of this state, who in person or through an agent does any of the following enumerated acts, submits himself, and if an individual, his personal representative, to the jurisdiction of the courts of this state as to any claim arising from:

(1) the transaction of any business with this state;

(2) contracting to supply services or goods in this state;

(3) the causing of any injury with this state whether tortuous or by breach of warranty;

(4) the ownership, use, or possession of any real estate situated in this state;

(5) contracting to insure any person, property or risk located within this state at the time of contracting;

(6) with respect to actions of divorce, separate maintenance, or child support, having resided, in the marital relationship, within this state notwithstanding subsequent departure from the state; or the commission in this state of the act giving rise to the claim so long as that act is not a mere omission, failure to act, or occurrence over which the defendant had no control; or

(7) the commission of sexual intercourse with this state which gives rise to a paternity suit under Chapter 45a, Title 78, to determine paternity for the purpose of establishing responsibility for child support.

Rule 33, Rules of the Utah Court of Appeals:

(a) If the Court determines that a motion made or an appeal taken under these rules is either frivolous or for delay, it shall award just damages and single or double costs, including reasonable attorney fees, to the prevailing party.

(b) The Court may impose appropriate sanctions against any counsel who inadequately represents a client on appeal.

RELIEF SOUGHT ON APPEAL

Ehman seeks an order of the Court reversing the decision of the Circuit Court, which denied Ehman's Motion to Dismiss Plastic World's complaint.

STATEMENT OF THE FACTS

The statement of facts appearing in Ehman's brief is an accurate representation of the facts that exist with one exception, which is that Plastic World has sufficiently asserted in it's complaint the proper basis for jurisdiction over Ehman.

ARGUMENT

I

LEGISLATIVE MANDATE DESIRES RESIDENTS OF THE STATE OF UTAH TO HAVE MAXIMUM PROTECTION IN REGARD TO JURISDICTION OVER NON-RESIDENTS

There is clear evidence before the appellate court as to the attitude that is to be taken in determining whether or not jurisdiction should be exercised over a non-resident in a civil proceeding brought by a resident of the State of Utah. That evidence is succinct and direct language, as set forth in Utah Code Ann. Sec. 78-27-22, which in pertinent part is as follows:

It is declared as a matter of legislative determination, that the public interest demands the state provide its citizens with an effective means of redress against nonresident persons, who through certain significant minimal contacts with this state, incur obligations to citizens entitled to the state's protection. This legislative action is deemed necessary because of technological progress which has substantially increased the flow of commerce between the several states resulting in increased interaction between persons of this state and persons of other states.

The provisions of this act, to ensure maximum protection to citizens of this state, should be applied so as to assert jurisdiction over nonresident

defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution.

Appellant has not asserted that there have been no contacts with the State of Utah and its residents, only that those contacts are insufficient to confer jurisdiction upon the appellant. The protection afforded by the Courts of this State must be applied to the fullest extent allowed by due process of law. Brown & Associates v. Carnes Corp. 611 P.2d 378,380 (Utah 1980).

Appellant fully admits that there was a contract to do business with a Utah Corporation, that numerous visits were made to Salt Lake City, Utah by an agent of Appellant, and that delivery and possession of the manufactured goods was done in Salt Lake City, Utah.

Appellant relies heavily on the case of Mallory Engineering v. Ted R. Brown & Associates, 618 P.2d 1004 (Utah 1980), wherein the Utah Court was attempting to set out the difference between "doing business" and "minimal contacts". Appellant attempts to show that there was no "transaction of business" but only "minimal contacts". Even if we were to assume that appellant is correct in its argument that there was no transaction of business, the Court in Mallory held that if the activities of the defendant are limited in nature, the Court may still assume jurisdiction over the person in relation to the cause of action that is related to the activity of the defendant within this state.

In the present case, suit has been brought by Plastic World against Ehman for the very transactions that took place in the State of Utah, which transactions were completely and totally instigated at the request of Ehman. To afford Ehman all of the benefits of doing business with residents of the State of Utah, and then allowing Ehman to escape across the border to Wyoming to avoid jurisdiction is totally contrary to the legislative intent of U.C.A. Sec. 78-27-22.

After reading the legislative and thereafter statutory intent of U.C.A. Sec. 78-27-22, it becomes obvious, that based upon the file herein and the affidavits submitted by respondents, there is sufficient authority to confer jurisdiction over appellant.

II

THE UTAH LONG ARM STATUTE SETS FORTH THE SPECIFIC REQUIREMENTS NECESSARY TO ASSERT JURISDICTION OVER NON-RESIDENTS

The Utah long arm statute gives very definite and specific guidelines for the Court to follow in determining whether or not jurisdiction over a non-resident defendant exists. Utah Code Annotated Sec. 78-27-24 sets forth in pertinent part the following:

Any person, ... whether or not a citizen or resident of this state, ... submits himself ... to the jurisdiction of this state as to any claim arising from: (1) the transaction of any business within this state.

The legislature does not stop there, and goes one step further to define exactly what it means to transact business in

the State of Utah. Section 78-27-23, U.C.A. defines "transaction of business" as follows:

(2) The words "transaction of business within this state" mean activities of a nonresident person, his agents, or representatives in this state which affect persons or businesses with the State of Utah.

The facts of this case are undisputed. Ehman contacted Plastic World and solicited bids for work to be performed in salt Lake City, Utah (Appellant's brief, page 2, paragraph 4; R-2). Ehman's representatives contacted Plastic World numerous times in Salt Lake City, Utah (Appellant's brief, page 2, paragraph 5; R-16; R-23). Ehman paid monies to Plastic World in Salt Lake City, Utah (R-23-24), and Ehman took possession of the finished goods in Salt Lake City, Utah (R-23-24).

From the foregoing argument and a recitation of the undisputed facts, it has been clearly established that Ehman has maintained sufficient minimum contacts to satisfy the requirements of transacting business in the State of Utah.

III

PLAINTIFF'S COMPLAINT CONTAINS ALLEGATIONS SUFFICIENT TO ASSERT JURISDICTION OVER DEFENDANT

Ehman insists that Plastic World failed to assert the jurisdictional basis for which the Utah court may acquire jurisdiction over Ehman, and based thereon the complaint of Plastic World should be dismissed.

Utah is not a code pleading state and under Rule 8(a) of the Utah Rules of Civil Procedure the plaintiff in an action is

required only to give a short and plain statement of his claim against the defendant. The complaint is required only to give the opposing party fair notice of the nature and basis or grounds of the claim asserted by plaintiff, and a general indication of the type of litigation involved. Blackham v. Snelgrove, 3 Utah 2d 157, 280 P.2d 453 (Utah 1955).

In the event the lower court finds the pleading insufficient to place defendant on notice of the impending action and the claims asserted by plaintiff, the proper remedy is to allow the plaintiff an opportunity to amend the pleading, but in no event to dismiss plaintiff's complaint. In re Marriage of Morrision, 613 P.2d 557, 26 Wash App. 571 (Wash App 1980); Rockney v. Runft, 379 P.2d 285, 191 Kan. 117, (Kan 1963).

IV

PLASTIC WORLD IS ENTITLED TO ATTORNEYS' FEES INCURRED IN RESPONDING TO THIS APPEAL

Plastic World hereby requests its attorneys' fees incurred in responding to this appeal. Attorneys' fees are appropriately awarded when an appeal taken is frivolous. R. Utah Ct. App 33(a). For purposes of Rule 33(a), a "frivolous appeal" is one having no reasonable legal or factual basis, that is, one that is not well grounded in fact or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. O'Brien v. Rush, 774 P.2d 306,310 (Utah App.1987).

CONCLUSION

There is ample evidence before the Court, by way of pleading and affidavits of Plastic World's agents, which would justify the exercise of jurisdiction over Ehman.

The Circuit Court correctly denied Ehman's Motion to Dismiss Plastic World's complaint for lack of jurisdiction. The Order of the Circuit Court should be affirmed in its entirety. Moreover, inasmuch as Ehman's claims are without merit and without basis in law or fact, this Court should award Plastic Worlds attorneys' fees incurred in responding to this appeal.

DATED this 17th day of November, 1988.

SUTHERLAND & ENGLAND



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CERTIFICATE OF MAILING

I hereby certify that on the 17th day of November, 1988, I caused to be mailed a true and correct copy of the foregoing Brief of Respondent postage prepaid to the following:

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Salt Lake City, Utah 84111

